

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND
NORTHERN DIVISION**

UNITED STATES

v.

DAMIEN SMITH,

Defendant.

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Case No. SAG-20-0047

**MOTION FOR DETENTION HEARING
AND TO ORDER PRETRIAL RELEASE**

The defendant, Damien Smith, through undersigned counsel, hereby moves this Honorable Court to schedule a detention hearing and to release Mr. Smith on home detention with electronic monitoring, pursuant to 18 U.S.C. §§ 3142. As an asthmatic, Mr. Smith is particularly vulnerable to the severe health risks associated with the novel coronavirus and therefore he is now requesting a detention hearing, which he has not yet had. In support of this motion, Mr. Smith submits the following:

1. Mr. Smith is charged with one count of possession of a firearm by a prohibited person under 18 U.S.C. § 922(g), one count of possession with intent to distribute controlled substances under 21 U.S.C. § 841(a), and one count of possession of a firearm in furtherance of a drug trafficking crime under 18 U.S.C. § 924(c). The case arises from a warrantless search of Mr. Smith, as he walked down the street minding his own business, by officers of the Baltimore City Police Department. The officers stopped him claiming that they could see “the imprint of a gun” through the exterior of the canvas bag that Mr. Smith was carrying. Without any additional cause, officers grabbed the bag, tackled Mr. Smith to the ground, and located a gun and some vials of cocaine inside the bag. Defense counsel is preparing to litigate a suppression motion and has advised government counsel accordingly.

2. Mr. Smith had an initial appearance before a magistrate judge on February 20, 2020. At that time, he consented to detention in order to allow counsel additional time to explore potential release options. Mr. Smith was advised the he reserved the right to request a detention hearing at a later date. He is doing so now.
3. The Bail Reform Act mandates pretrial release unless there is no set of conditions that can reasonably assure a person's appearance or community safety. 18 U.S.C. § 3142. We respectfully submit that releasing Mr. Smith to home confinement, with electronic monitoring, will accomplish those purposes.
4. In light of the rapidly spreading novel coronavirus, it is especially important that Mr. Smith is released promptly. Mr. Smith is currently detained at the D.C. Jail, where the U.S. Marshals Service has reported that at least one detainee is being quarantined after suspected exposure to the virus. In addition, the Marshals Service has confirmed that at least one deputy who processes arrestees in D.C. Superior Court (who are then transferred to D.C. Jail if ordered detained), has tested positive for the virus.¹
5. Mr. Smith has severe asthma, which places him at especially high risk of a bad outcome if exposed to the novel coronavirus. The World Health Organization and the Asthma and Allergy Foundation of America both list asthma as one of the medical conditions that make people especially vulnerable to becoming severely ill if infected by COVID-19.² The CDC released guidelines for people who may be at higher risk for severe illness, including people

¹ *A U.S. Marshal at D.C. Superior Court has tested positive for coronavirus*, Washington Post March 18, 2020, Available at: <https://www.washingtonpost.com/dc-md-va/2020/03/18/coronavirus-dc-maryland-virginia-updates>.

² Coronavirus disease (COVID-19) advice for the public: Myth busters, World Health Organization, at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/myth-busters>; Coronavirus (COVID-19): What People With Asthma Need to Know (March 13, 2020), at <https://community.aafa.org/blog/coronavirus-2019-ncov-flu-what-people-with-asthma-need-to-know>

with asthma, and urges that “COVID-19 can affect [asthmatics] respiratory tract (nose, throat, lungs), cause an asthma attack, and possibly lead to pneumonia and acute respiratory disease.”

Those with asthma are urged to take extra precautions against exposure to the virus.³

6. The novel coronavirus pandemic has spurred a worldwide health emergency. The Director of the World Health Organization has stressed that the term “pandemic” is not used lightly and called for countries to take “urgent and aggressive action.”⁴ The dangerous outbreak has spread across the globe, including throughout Maryland, the District of Columbia, and possibly into the D.C. jails. Maryland declared a State of Emergency on March 5, 2020;⁵ D.C. declared a Public Health Emergency on March 11, 2020;⁶ and the U.S. President declared a National Emergency on March 13, 2020.⁷ As of March 18, 2020, COVID-19 has been confirmed to have infected 209,300 people, leading to at least 8,787 deaths worldwide.⁸ Those

³ People with Asthma and COVID-19, Centers for Disease Control and Prevention, at <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/asthma.html>.

⁴ *WHO Characterizes COVID-19 as a Pandemic*, World Health Organization (March 11, 2020) at <https://bit.ly/2W8dwpS>; “Coronavirus: COVID-19 Is Now Officially A Pandemic, WHO Says,” NPR March 11, 2020. Available at: <https://www.npr.org/sections/goatsandsoda/2020/03/11/814474930/coronavirus-covid-19-is-now-officially-a-pandemic-who-says>

⁵ *Declaration of State of Emergency and Existence of Catastrophic Health Emergency-COVID-19*, by Governor Hogan, March 5, 2020, available at <https://governor.maryland.gov/wpcontent/uploads/2020/03/Proclamation-COVID-19.pdf>

⁶ D.C. Government (March 11, 2020), <https://coronavirus.dc.gov/release/mayor-bowser-declares-public-health-emergency>

⁷ *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, by President Trump, March 13, 2020, available at <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>

⁸ *Coronavirus Map: Tracking the Global Outbreak*, N.Y. Times March 18, 2020, Available at: <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html>

numbers represent a nearly 15-20% increase from March 17, 2020. At least 85 cases of COVID-19 have been confirmed in Maryland,⁹ and at least 31 have been confirmed in D.C.¹⁰

7. The number of people infected is growing exponentially. Alarming, experts predict that the numbers will double every three days if localities do not implement interventions like social distancing and testing.¹¹ But as the former chief medical officer on Rikers Island underscored, social distancing and other preventive measures are “impossible in jails and prisons, or are made worse by the ways jails and prisons are operated.” Quite simply, “everything about incarceration is going to make the curve go more steeply up.”¹²
8. Conditions of confinement create the ideal environment for the transmission of contagious disease.¹³ Inmates cycle in and out of detention facilities from all over the country, and people who work in the facilities including correctional officers and care and service providers leave and return daily, without screening. Incarcerated people have poorer health than the general population and, even at the best of times, medical care is limited in these facilities.¹⁴ According

⁹ *Maryland confirms 28 new cases of coronavirus, now at least 85 total*, Baltimore Sun March 18, 2020, Available at: <https://www.baltimoresun.com/coronavirus/bs-md-wednesday-coronavirus-update-20200318-hyh6zyn3crfufmyofn66zyef5u-story.html>

¹⁰ D.C. Government (March 17, 2020), <https://coronavirus.dc.gov/release/coronavirus-data-update-march-17>

¹¹ *Why ‘Exponential Growth’ Is So Scary for the COVID-19 Coronavirus*, Forbes March 17, 2020, Available at: <https://www.forbes.com/sites/startswithabang/2020/03/17/why-exponential-growth-is-so-scary-for-the-covid-19-coronavirus/#52471ca34e9b>

¹² *How Prisons and Jails Can Respond to the Coronavirus*, The New Yorker March 14, 2020, Available at: https://www.newyorker.com/news/q-and-a/how-prisons-and-jails-can-respond-to-the-coronavirus?utm_source=onsite-share&utm_medium=email&utm_campaign=onsite-share&utm_brand=the-new-yorker

¹³ Joseph A. Bick (2007). Infection Control in Jails and Prisons. *Clinical Infectious Diseases* 45(8):1047-1055, at <https://doi.org/10.1086/521910>

¹⁴ Laura M. Maruschak et al. (2015). Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12. NCJ 248491. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, at <https://www.bjs.gov/content/pub/pdf/mpsfpi1112.pdf>

to public health experts, incarcerated individuals “are at special risk of infection, given their living situations,” and “may also be less able to participate in proactive measures to keep themselves safe;” “infection control is challenging in these settings.”¹⁵

9. The spread of the novel coronavirus has proven to be a serious public health problem in other countries’ prison systems. In China, officials have confirmed the coronavirus spreading at a rapid pace in Chinese prisons, counting 500 cases.¹⁶ Secretary of State Mike Pompeo has called for Iran to release Americans detained there because of the “deeply troubling” “[r]eports that COVID-19 has spread to Iranian prisons,” noting that “[t]heir detention amid increasingly deteriorating conditions defies basic human decency.”¹⁷ Courts across Iran have granted 54,000 inmates furlough as part of the measures to contain coronavirus across the country.¹⁸
10. In the U.S., including in Baltimore City, steps are being taken to facilitate the release of elderly and sick prisoners and to reduce jail populations by providing early release for some inmates and by discouraging the admission of individuals arrested on non-violent misdemeanor charges.¹⁹ Baltimore City State’s Attorney Marilyn Mosby has ordered her staff to drop

¹⁵ “*Achieving A Fair And Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal Experts in the United States*,” (March 2, 2020), at <https://bit.ly/2W9V6oS>; “*An Epicenter of the Pandemic will be Jails and Prisons, if Inaction Continues*,” Amanda Klonsky, *New York Times*, March 16, 2020; “*How Prisons and Jails Can Respond to the Coronavirus*,” Jennifer Gonnerman, *the New Yorker*, March 14, 2020

¹⁶ Rhea Mahbubani, *Chinese Jails Have Become Hotbeds of Coronavirus As More Than 500 Cases Have Erupted, Prompting the Ouster of Several Officials*, Business Insider Feb. 21, 2020, Available at: <https://bit.ly/2vSzSRT>

¹⁷ Jennifer Hansler and Kylie Atwood, *Pompeo calls for humanitarian release of wrongfully detained Americans in Iran amid coronavirus outbreak*, CNN Mar. 10, 2020, Available at: <https://cnn.it/2W4OpV7>

¹⁸ Claudia Lauer and Colleen Long, *US Prisons, Jails On Alert for Spread of Coronavirus*, The Associated Press March 7, 2020, Available at: <https://apnews.com/af98b0a38aaabedbc059092db356697>

¹⁹ In New York Brooklyn District Attorney Eric Gonzalez, joined by public health experts, has asked Governor Cuomo to grant emergency clemencies to elderly and sick prisoners (Sarah Lustbader, *Coronavirus: Sentenced to COVID-19*, The Daily Appeal Mar. 12, 2020, Available at: <https://theappeal.org/sentenced-to-covid-19/>); “*Los Angeles is Releasing Inmates Early and Arresting Fewer*

charges for non-violent crimes in order to prevent the spread of coronavirus in jails.²⁰ Police in Philadelphia and Collins County, Texas have stopped arresting people for nonviolent crimes, including drug offenses, theft, and prostitution.²¹ Jail releases have been ordered in a growing number of states, including California,²² North Carolina,²³ Ohio,²⁴ and Virginia.²⁵

11. The federal bench in the District of Maryland is well aware of many of the challenging conditions of confinement that individuals confront in the local federally-contracted facilities that are relied upon by the court for defendants awaiting trial and serving short sentences. These harsh conditions at times have been the basis for Maryland district court judges to grant downward variances when sentencing individuals held in pretrial detention. *See, e.g., United*

People Over Fear of the Coronavirus in Jails”

<https://www.buzzfeednews.com/article/salvadorhernandez/los-angeles-coronavirus-inmates-early-release>; “*Sheriff suspends non-violent arrests due to COVID-19*” Alyssa Mauk, March 14, 2020, *The Journal Times*.

²⁰ *Baltimore prosecutors, defense, court work to reduce activity and decrease jail population*, Maryland Daily Record March 18, 2020, Available at: <https://thedailyrecord.com/2020/03/18/baltimore-city-reception-court-coronavirus/>

²¹ *With courts closed by pandemic, Philly police stop low-level arrests to manage jail crowding*, The Philadelphia Inquirer March 18, 2020, Available at: <https://www.inquirer.com/health/coronavirus/philadelphia-police-coronavirus-covid-pandemic-arrests-jail-overcrowding-larry-krasner-20200317.html>

²² “*L.A. County releasing some inmates from jail to combat coronavirus.*” L.A. Times March 16, 2020, Available at: <https://www.latimes.com/california/story/2020-03-16/la-jail-population-arrests-down-amid-coronavirus>

²³ *Mecklenburg begins releasing jail inmates to avoid cellblock outbreak of COVID-19*, Charlotte Observer March 18, 2020, Available at: <https://www.charlotteobserver.com/news/coronavirus/article241279836.html>

²⁴ *Ohio Judges Are Releasing People from Jails to Fight Coronavirus. It’s a Good Idea.* Mother Jones March 16, 2020, Available at: https://www.motherjones.com/coronavirus-updates/2020/03/ohio-judges-are-releasing-people-from-jails-to-fight-coronavirus-its-a-good-idea/?utm_source=The+Appeal&utm_campaign=21d36eadf4-EMAIL_CAMPAIGN_2018_08_09_04_14_COPY_01&utm_medium=email&utm_term=0_72df992d84-21d36eadf4-58392691

²⁵ *Virginia Beach Sheriff releasing nonviolent inmates from city jail amid coronavirus outbreak*, WAVY-TV 10 March 17, 2020, Available at: <https://www.wavy.com/news/local-news/virginia-beach/virginia-beach-sheriff-releasing-nonviolent-inmates-from-city-jail-amid-coronavirus-outbreak/>

States v. Amin Laguna Morales, No. TDC-19-cr-180 (finding it appropriate to grant a downward variance due in part to the poor conditions of pretrial confinement at CDF and the D.C. Jail).

12. It is unrealistic to expect that, in the face of a pandemic, these same facilities would have the resources necessary to adequately prevent the spread of the virus, such as screening and testing of inmates, correctional staff, law enforcement officers, and other care and service providers who enter the facility. People incarcerated at D.C. Jail are kept in cells that generally hold more than one person – where open toilets sit just feet from sleeping areas – and are subjected to frequent intimate contact by correctional staff, including searches of their mouths and body cavities. Moreover, each new arrestee brought from the community into the facility will be held with the existing population. The large number of people, close quarters, and already-deficient sanitary conditions at the jail create an especially alarming breeding ground for COVID-19 to take hold.
13. This Court should consider the “total harm and benefits to prisoner and society” that continued imprisonment will yield, relative to the heightened health risks posed during this rapidly encroaching pandemic. *See Davis v. Ayala*, 135 S. Ct. 2187, 2209 (2015) (Kennedy, J., concurring) (calling for heightened judicial scrutiny of the projected impact of jail and prison conditions on a defendant); *United States v. Mateo*, 299 F. Supp. 2d 201, 212 (S.D.N.Y. 2004) (reducing sentence where defendant’s pretrial conditions were “qualitatively more severe in kind and degree than the prospect of such experiences reasonably foreseeable in the ordinary case”). The risk to the jail population, the staff of the correctional facilities, and the community at large is lessened when fewer inmates are detained. People like Mr. Smith, who are charged with non-violent offenses and who pose no threat to the community’s safety simply should not be in jails at this moment of national crisis.

14. The situation facing this Court and Mr. Smith has dramatically changed since his initial appearance on February 20, 2020, and calls for a proportionate response from the Court. The health risks associated with the COVID-19 pandemic, and Mr. Smith's heightened susceptibility to severe illness, materially bear on why it is appropriate to release him on home detention with location monitoring.

For all of these reasons, Mr. Smith requests that this Court schedule a detention hearing at the earliest available date and order him released on home detention with location monitoring.

Respectfully submitted,

/s/

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